

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

JOHN DOE,)	
)	
Plaintiff,)	Case No. 4:23-CV-1312
)	
vs.)	
)	
LESLIE SUTTON,)	
)	
Defendant.)	

DEFENDANT’S MOTION TO DISMISS
CERTAIN COUNTS OF PLAINTIFF’S COMPLAINT

Comes now Defendant, Leslie Sutton (“Defendant”), by and through undersigned counsel, and for her Motion to Dismiss Certain Counts of Plaintiff John Doe’s (“Plaintiff”) Complaint,¹ states to the court as follows:

1. In Count II, Plaintiff failed to set forth sufficient facts to support a claim for Intrusion Upon Seclusion as Plaintiff failed to allege that Defendant obtained information about the subject matter from some method objectionable to the reasonable person. Further, Plaintiff simply asserted a conclusion alleging the existence of a secret and private subject matter. Plaintiff has not described specifically the content of the photos that give rise to the existence of a secret or private subject matter. The descriptions of the photos, as pleaded, give no indication beyond speculation that the content consists of a secret or private subject matter. Plaintiff has not set forth sufficient facts to support his claim for Intrusion Upon Seclusion.

¹ Defendant acknowledges that Plaintiff filed a Motion for Leave to File an Amended Complaint. The claims Defendant seeks to dismiss herein from Plaintiff’s initial state court Petition are asserted verbatim in the proposed Amended Complaint, they are just numbered differently.

2. Likewise, as to Count III, Plaintiff has failed to set forth sufficient facts to support a claim for Public Disclosure of Private Facts. Plaintiff failed to allege the photos were published to a large number of people.

3. Likewise, as to Count IV, Plaintiff failed to set forth sufficient facts to support a claim for Intentional Infliction of Emotional Distress. Once more, Plaintiff asserted a conclusion by alleging the conduct was outrageous or extreme. However, Plaintiff has not described specifically the content of the photos that would show Defendant's conduct was outrageous or extreme. Further, Plaintiff failed to make a claim they suffered extreme emotional distress resulting in "bodily harm." Finally, Plaintiff's did not allege that Defendant's conduct was intended "solely" to cause emotional distress to Plaintiff.

4. Finally, as to Count V, Plaintiff failed to set forth sufficient facts to support a claim for Negligent Infliction of Emotional Distress. Plaintiff again asserted a conclusion by alleging the Defendant realized or should have realized that her conduct involved an unreasonable risk of causing distress. However, Plaintiff has not described specifically the content of the photos that would show Defendant's realized or should have realized that their conduct involved an unreasonable risk of causing distress.

5. Defendant files simultaneously her Memorandum in Support of her Motion to Dismiss and incorporates the same by reference as though fully set forth herein.

WHEREFORE, Defendant, Leslie Sutton, requests that this Court enter an Order dismissing Plaintiff's Counts II, III, IV and V for failure to state claim with to which relief can be granted, and for further relief as the Court deems just and proper.

/s/ Justin A. Hardin

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing pleading was served by the Court's electronic filing system on this 15th day of November, 2023, on the counsel of record listed below.

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